

FILED

August 6, 2009

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION	:	
OR REVOCATION OF THE LICENSE OF	:	Administrative Action
	:	
FREDERIC FEIT, M.D.	:	FINAL ORDER GRANTING
License No. 25MA05617400	:	SUMMARY DECISION
	:	
TO PRACTICE MEDICINE AND SURGERY	:	
IN THE STATE OF NEW JERSEY	:	

This matter was opened to the New Jersey State Board of Medical Examiners (the "Board") upon the filing of an Administrative Complaint by the Attorney General of New Jersey, by Tara Adams Ragone, Deputy Attorney General, on February 25, 2009. The single count Complaint alleged that respondent Frederic Feit, M.D. was the subject of a Criminal Indictment (No. 06-09-00108-S) which charged him with health care claims fraud in the second degree, in violation of N.J.S.A. 2C:21-4.3(a) and theft by deception in the second degree, in violation of N.J.S.A. 2C:20-4(a) and 2C:2-6. The criminal charges related to his submission of claims for reimbursement for medical procedures and/or services, including nerve blocks, that it was alleged he had not performed.

The Complaint further alleged that on December 24, 2008, respondent entered a guilty plea to a single count of theft by deception, amended to be a third degree offense, in violation of N.J.S.A. 2C:20-4. The Complaint alleged that as part of his plea respondent

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admitted under oath that from January 15, 1998 until at least March 5, 2004, he had billed Medicare, Aetna Insurance Company, and Horizon Blue Cross for performing paraspinal nerve block procedures on patients knowing that he had not used fluoroscopic guidance during these procedures and that the billing code he used for paraspinal nerve blocks required use of fluoroscopic guidance. In addition, respondent admitted under oath that he had been paid by these entities an aggregate amount between \$500 and \$75,000 for the billing submitted by his practice for paraspinal nerve blocks despite his failure to use fluoroscopic guidance. Additionally it is alleged respondent agreed to pay restitution in the amount ordered of \$581,105.00 in connection with the indictment.

The conduct detailed in the Complaint is alleged to constitute: the use of dishonesty, fraud, deception, misrepresentation, false promise, and/or false pretense in violation of N.J.S.A. 45:1-21(b), and conviction of and/or engagement in acts constituting a crime or offense involving moral turpitude or relating adversely to the activity regulated by the Board pursuant to N.J.S.A. 45:1-21(f). Additionally, respondent's conduct is alleged to constitute professional misconduct in violation of N.J.S.A. 45:1-21(e) and a failure to fulfill the ongoing statutory requirement of good moral character, which is a requirement for licensure pursuant to N.J.S.A. 45:9-6. The Complaint concludes with a demand for a judgment against respondent

suspending or revoking his license, assessing civil penalties, costs, reimbursement and directing other relief as the Board deems equitable.

Respondent, represented by John P. Shiffman, Esq., filed an Answer with the Board on April 21, 2009 in which he admits he entered a guilty plea to theft by deception and denies the remainder of the allegations. On or about June 5, 2009, the Attorney General filed a Motion for Summary Decision in this matter pursuant to N.J.A.C. 1:1-12.5(a), asserting that there were no material issues of fact to be decided at a hearing. Respondent's counsel submitted an opposition to the motion.*

The Attorney General's brief listed ten (10) material facts that are established. She cites to respondent's Plea Transcript, Answer, Plea Form and Judgment of Conviction to demonstrate that all of the essential or material facts in this matter are undisputed (See Attorney General's Appendix). The facts as set forth in the brief, are as follows (citations omitted):

1. Respondent at all times relevant to the Administrative Complaint has been a physician licensed to practice medicine and surgery in the State of New Jersey with license number 25MA05617400.

* Although respondent's attorney sought to be relieved as counsel, he withdrew that motion and fully participated in the proceeding.

2. Respondent at all times relevant to the Administrative Complaint engaged in the solo practice of medicine at Modern Pain Therapy Center, which practice is registered with the Board as being at 41 Center Street, Freehold, New Jersey 07728.
3. On September 26, 2006, the New Jersey State Grand Jury returned a three-count indictment (No. 06-09-00198-S) against respondent (sub nom Frederic Feit) in the Superior Court of New Jersey, Law Division, in which Counts One and Two charged respondent with health care claims fraud in the second degree, in violation of N.J.S.A. 2C:21-4.3(a); and Count Three charged respondent with theft by deception in the second degree, in violation of N.J.S.A. 2C:20-4(a) and 2C:2-6, relating to his submission of claims for reimbursement for medical procedures and/or services, including nerve blocks, that allegedly he had not performed.
4. On December 24, 2008, respondent entered a guilty plea before the Honorable Ronald Lee Reisner, J.S.C. in the Monmouth County Superior Court, Law Division, Criminal Part, to Count Three of Indictment No. 06-09-00198-S, theft by deception,

amended to be a third degree offense, in violation of N.J.S.A. 2C:20-4.

5. In doing so, respondent admitted the following under oath concerning January 15, 1998 until at least March 5, 2004.

a. That he was responsible for Modern Pain Therapy Center's billing to health insurance carriers.

b. That the billing code for a paraspinal nerve block required the use of fluoroscopic guidance.

c. That he billed Medicare, Aetna Insurance Company, and Horizon Blue Cross for paraspinal nerve blocks when he had not used fluoroscopic guidance in performing the procedures.

d. That when he so billed these entities, he knew that the billing code he was using required the use of fluoroscopic guidance, which he had not used.

e. That he then was paid by these entities based on this billing submitted by him.

f. That , for purposes of the third degree count to which he was pleading guilty, the aggregate amount of the payments that he had received

from these insurance companies based on this improper billing was between \$500 and \$75,000.

6. In connection with this guilty plea, respondent waived a restitution hearing.
7. On April 2, 2009, respondent was sentenced to probation for a period of five years, fined \$15,000, ordered to pay restitution in the amount of \$578,978.12, and required to pay other court fees and penalties.
8. Respondent is required to pay his fines/penalties and restitution over the period of his probation in equal installments of \$100,000.00 per year.
9. A Judgment of Conviction against respondent was entered on April 2, 2009.
10. As part of his guilty plea, respondent specifically acknowledged in substance that issues of licensing will be handled by the Board.

In the Motion, the Attorney General contended that Summary Decision should be granted because respondent's criminal conviction and admissions under oath conclusively and indisputably establish that he violated the statutes governing the practice of medicine in New Jersey by knowingly overbilling insurance entities \$578,978.12 over a period of more than six years. In his responsive papers, respondent admitted the fact of the three-count

indictment, respondent's entry of a guilty plea on Count Three of the Indictment to theft by deception, the fact of the Judgment of Conviction entered against him and his sentence to five (5) years probation, a \$15,000 fine and restitution of \$578,978.12. In essence he admitted the material factual allegations, but asserted that because the conviction is on appeal there are material facts at issue. He asserted that the plea, although voluntary was not knowing as he did not know he would face Medical Board action as well as imposition of restitution in the amount ordered. He contends that until the appeal is concluded there is no finality to the criminal proceeding and therefore Summary Decision should be denied.

On July 10, 2009, the Board entertained oral argument on the Motion for Summary Decision. The State reiterated its arguments that there were no genuine issues of fact to be determined. The Attorney General then urged the Board to discount respondent's opposition to the Summary Decision Motion as it is based on his belated submission of a Notice of Appeal of the Criminal Judgment which merely challenges the fine and restitution ordered in his criminal case. She argues that although respondent

claims he was entitled to a restitution hearing following his guilty plea in the criminal case, his Plea Form, which he signed and initialed with the benefit of counsel specifically acknowledges that he waived a "restitution hearing and leaves the decision to

judge [sic]." Further, the transcript of respondent's guilty plea memorializes his waiver of a restitution hearing and that he may be liable for the full amount alleged in the criminal complaint. The State urges that respondent's claim that the plea was not knowing is also meritless as both the plea form and the transcript of the plea confirm that respondent was notified and aware that the licensing issues were to be dealt with by the Board of Medical Examiners. Further, the plea transcript included the following statement of the Deputy Attorney General prosecuting the criminal matter.

... the State is not making any recommendations as to sentence, nor will the State make any recommendation to the Board of Medical Examiners regarding defendant's license other than to alert the Board that defendant has entered a plea and will be guilty of a crime of theft by deception in the third Degree.

Respondent's attorney on the record at the plea hearing stated that

I've also gone over in detail with Dr. Feit the collateral consequences as a result of this plea that deals with his medical license, which the board will take up, that this Court won't take up ... there may be collateral consequences in other areas.

Further, the State argues that the Plea Form clearly states

"Defendant understands that any licensing questions will be handled by New Jersey Board of Medical Examiners "[sic]." Finally, the Attorney General points out that respondent was present and

represented for the entirety of the criminal proceeding by counsel.

Following oral argument on the motion, the Board found there were no genuine issues of material fact to be determined and that the moving party was entitled to prevail as a matter of law pursuant to N.J.A.C. 1:1-12.5(b). The Board's conclusion is amply supported by the certified copy of the Judgment of Conviction, respondent's sworn statements memorialized in his plea transcript and his admission in his Answer to the entry of the Judgment of Conviction and Sentence. We find it is undisputed that respondent knowingly entered into a guilty plea and made sworn admissions that he was guilty of theft by deception for a period in excess of six years. We further find by relying on respondent's sworn admissions and the conviction that the conduct he pled guilty to involved a crime of moral turpitude in violation of 45:1-21(f).

It is well established that crimes involving dishonesty and fraud constitute crimes of moral turpitude. Mount v. Trustees of Public Employees' Retirement System. 133 N.J. Super. 72, 81 (App. Div. 1975). Furthermore, but for respondent's medical license he could not have committed the conduct he admitted-billing insurance companies for medical services he did not perform. Therefore, we also find the conduct directly related, and adverse to the practice of medicine in violation of N.J.S.A. 45:1-21(f). Respondent also clearly engaged in dishonesty, fraud, deception,

(an element of the crime he was convicted of) misrepresentation, false promise or false pretense and thus is subject to discipline pursuant to N.J.S.A. 45:1-21(b). We further find that respondent committed professional misconduct in violation of N.J.S.A. 45:1-21(e) by submitting nearly \$600,000.00 of inflated medical bills to insurance carriers. Additionally, we find respondent's pattern of conduct spanning more than six years, culminating in a knowing taking of hundreds of thousands of dollars from the coffers of limited health care funds demonstrates a lack of good moral character which is a continuing requirement of licensure under the provisions of N.J.S.A. 45:9-6.

We find respondent's attempt to now challenge before the licensing agency the validity of his guilty plea to be unavailing. A criminal conviction, even when an appeal has been filed, conclusively establishes the underlying facts in a subsequent professional disciplinary proceeding In re Coruzzi, 98 N.J. 77, 80 (1984). Respondent will not be heard to now relitigate his criminal guilt. Further, N.J.A.C. 1:1-12.5 provides that an agency should render a final decision in a contested case upon motion where the pleadings, discovery and affidavits demonstrate that no genuine issue of material fact exists and the moving party is entitled to prevail as a matter of law. We find when viewed in the light most favorable to respondent, that the State has demonstrated

its burden of establishing that there are no genuine issues of material fact in dispute and therefore grant summary decision.

In making this determination we recognize that summary disposition advances important public interests by providing a prompt, expeditious, and less expensive method of disposing of a matter when there is a showing as there is here that there are no genuinely disputed material facts requiring a full evidentiary trial See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67,74 (1954). Having determined that grounds exist for disciplinary action, the Board ordered the parties to proceed to the previously noticed mitigation phase of the hearing.

In mitigation counsel argued for lesser penalties, asserted respondent is passionate about the care of his patients and that hundreds of patients rely upon him. Six patients testified that he was a wonderful doctor who helped relieve their pain and they would be at a loss if he were not able to practice. An employee testified that she has never known a patient of Dr. Feit's to be harmed. Respondent also testified and claimed that he did nothing wrong. He represented that there is no "greed" in his life style and claimed as to his criminal plea that he was "foolish in making this plea at the advice of what I believed was wise counsel, but it's unjust to think that it's theft of service." He demonstrated no remorse for the conduct that gave rise to the admission and steadfastly asserted that he agreed to the plea

but with the understanding that this would not affect my license or my freedom. It was a deal to allow an end to this unjust prosecution. It was not an admission that I had done something wrong.

In determining penalty, the Board individually weighs the specific mitigating and aggravating factors of each case. We also are aware that the public relies upon the Board to review physician conduct and impose discipline where required. In approaching assessment of discipline in this case, the Board is particularly mindful of its vital role in addressing health care fraud. Although many agencies may have concurrent interest in curtailing health care fraud, the Board is uniquely positioned to take action to halt the conduct, penalize and rehabilitate the perpetrator, and deter other licensees from succumbing to the temptation of illegal billing. In this case we feel it is important to impose an active suspension and require education in ethics and billing. However, given the large amount of restitution ordered in the criminal matter we have waived any civil penalties, and order only that respondent pay the costs to the State of prosecuting this matter as it is unfair for the law abiding licensees to bear that burden through their licensure fees.

In reaching this determination on penalty which includes an active suspension we were aware that respondent demonstrated no remorse and did not even recognize that his billing over a six year period for services he had not performed was not only wrong but

illegal. He chose to ignore the fact of the guilty plea and his admissions and denied any wrongdoing to the Board. He cannot, in order to evade licensure action, be permitted to obtain the benefit of the criminal plea and then deny the conduct in the Administrative proceeding.

We also after an individualized assessment, find the costs the State sought to be reasonable and adequately document the legal and investigatory work which was performed and find that the work documented was work necessary to advance the prosecution of this case. We also believe the hourly rate for the Deputy is below that charged for legal services in the community and this rate has been sustained in prior cases. See Poritz v. Stang, 1288 N.J. Super. 217 (App. Div. 1996).

On July 28, 2009 respondent filed with the Board a Motion to Stay License Suspension with Supporting Certification; the Attorney General filed an opposition on July 29, 2009 and counsel replied on July 31, 2009. After consideration of the entirety of the record, the Board President on August 6, 2009 denied the Application for a Stay.

THEREFORE, it is on this 6th day of August , 2009

ORDERED:

1. Respondent's license to practice medicine in New Jersey is suspended for five (5) years; the first two years are to be an active suspension and the remaining three (3) years to be

stayed and served as a period of probation. The active suspension shall be effective on August 7, 2009, thirty (30) days from the June 10, 2009 oral pronouncement of the Order on the record. However effective as of June 10, 2009 respondent was ordered not to accept new patients and to provide copies to the Board of appointment schedules of all patients seen during that thirty (30) day period.

2. At the conclusion of the active period of suspension and prior to respondent's resumption of active practice in this State respondent shall appear before a Committee of the Board and demonstrate the following:

- (a) Full attendance at and successful completion of a Board approved ethics course.
- (b) Full attendance at and successful completion of a Board approved coding course.
- (c) Full satisfaction of costs to the state for the prosecution of this matter which includes:
 - (a) \$9,734.00 Attorneys fees
 - (b) \$1,047.00 Enforcement Bureau costs
 - (c) \$ 544.00 Transcript costs
 - \$11,689.00 Total costs
- (d) Timely and up-to-date compliance with respondent's criminal restitution obligations.

3. Following reinstatement of his medical license in the event respondent fails to make a timely restitution payment as required in the criminal proceeding, his New Jersey State medical license suspension shall automatically be reactivated (and remain active) until such time as respondent again demonstrates to the satisfaction of the Board that he is current in his payment obligations.

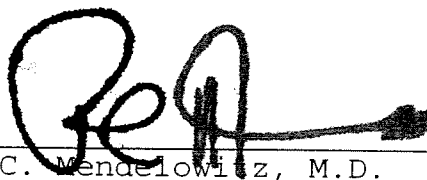
4. Any resumption of respondent's active practice of medicine in New Jersey shall include limitations on practice setting or billing including at a minimum that respondent shall either work in a setting where he has no responsibility for billing or the imposition of a Board approved billing monitor at respondent's expense. The parameters of any limitations shall be determined by the Board in its discretion at the time of resumption of practice and may include any other limitations deemed appropriate at the time of reinstatement.

5. No practice of medicine in any other State or jurisdiction by respondent will count toward respondent's period of active suspension of license in New Jersey.

7. In the event respondent does not timely submit payment of the civil penalties or costs, a certificate of debt shall be filed, and the Board may institute such other proceedings as are permitted by law.

NEW JERSEY STATE BOARD OF MEDICAL
EXAMINERS

By:

A handwritten signature in black ink, appearing to be 'PC Mendelowitz', written over a horizontal line.

Paul C. Mendelowitz, M.D.
President